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Chapter 11 trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
[Sacramento Division]

In re:

PAUL SANDNER MOLLER &
ROSA MARIA MOLLER,

Debtors.

Case No. 09-29936-C-11
Docket Control No. MHK-4

Date: December 14, 2010
Time: 9:30 a.m.
Dept: C (Courtroom 35)
Hon. Christopher M. Klein

**TRUSTEE'S MOTION FOR ABANDONMENT OF REAL PROPERTY AND
CERTAIN RELATED PERSONAL PROPERTY, EFFECTIVE DECEMBER 9, 2010
[9350 CURRY ROAD, DIXON, CALIF.]**

Jon Tesar (the "Trustee"), as trustee of the above-captioned bankruptcy estate of Paul Sandner Moller and Rosa Maria Moller (the "Debtors") hereby requests an order for abandonment of certain real property of the above-captioned bankruptcy estate and particular farming equipment associated with that real property, effective December 9, 2010. In support of this motion, the Trustee respectfully represents as follows:

I. BACKGROUND

On May 18, 2009 (the "Petition Date"), the Debtors filed a joint voluntary petition for relief under chapter 11 of title 11 of the United States Code. Debtor Paul Moller is an engineer involved in research and development of fuel-efficient engines and what are known as roadable aircraft.

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1 Jurisdiction for this motion exists under 28 U.S.C. § 1334, and venue in this
2 court is proper under 28 U.S.C. § 1409. This is a core proceeding pursuant to 28
3 U.S.C. § 157(b)(2)(A). The Trustee brings this motion under 11 U.S.C. § 554(a) and
4 pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 6007.¹ Under 11 U.S.C. §
5 554(a), the trustee is authorized to abandon property that is of inconsequential value
6 and benefit to the estate.

7 The property of the Debtors' bankruptcy estate includes a fee simple interest in
8 the real property commonly known as 9350 Curry Road, Dixon, California (the "Real
9 Property"), which is developed with the Debtors' residence and which also includes an
10 almond orchard that yields organically-grown crops that have been historically marketed
11 locally. See Declaration of Jon Tesar ("Tesar Declaration"), submitted herewith.

12 On the A-Schedule filed in their chapter 11 case, the Debtors value the Real
13 Property at \$1,500,000.00. See Request for Judicial Notice ("RJN"), submitted
14 herewith, at Exh. 1 (A-schedule filed May 18, 2009). At least one creditor that
15 requested relief from the automatic stay valued the Real Property at \$1,150,000. See
16 id. Exh. 2 (Relief From Stay Information Sheet for Docket Control No. SCC-1, filed Jan.
17 14, 2010). There are four deeds of trust against the Real Property securing obligations
18 that totaled about \$1,000,000 as of the Petition Date. See RJN Exh. 2 (Relief From
19 Stay Information Sheet showing liens totaling \$1,023,739) & Exh. 3 (Debtors' D-
20 schedule disclosing liens totaling \$977,749. In an amended C-schedule filed June 17,
21 2009, the Debtors claimed as exempt \$3,925.00 as to the Real Property.

22 On the B-schedule filed in their chapter 11 case, the Debtors identify certain
23 "Farm Equipment" which they value at approximately \$20,000.00. See RJN Exh. 4 (B-
24 schedule filed May 16, 2009). The Trustee has determined that the farm equipment
25 owned by the Debtors consists of three tractors and related equipment that is described

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27 1. The "notice of opportunity for hearing" procedure of Rule 6007(a) being
28 unavailable for this matter pursuant to Local Bankruptcy Rule 9014-1(k), the Trustee's
request is subject to a noticed hearing under Local Bankruptcy Rule 9014-1(f)(1).

1 in more detail in Exhibit 1 to the Tesar Declaration, along with some small tools and
2 small pieces of miscellaneous equipment (hereinafter, collectively referred to as the
3 "Equipment"). In an amended C-schedule filed June 17, 2009, the Debtors claimed as
4 exempt the sum of \$2,075.00 in regard to "Farm Equipment."

5 The Trustee is monitoring the disposition of the 2010 almond crop that has been
6 harvested from the Real Property, and along with an inventory of almond butter that
7 was processed from almonds grown on the Real Property. Since his appointment, the
8 Trustee has at various times sold almonds grown on the Real Property and almond
9 butter from almonds grown on the Real Property, as the market allows, and has
10 investigated the value of the Real Property and its tax basis. See Tesar Declaration.

11 By agreement, the Trustee and the Debtors have since approximately July 2010
12 been making ongoing monthly adequate protection payments to three of the creditors
13 holding deeds of trust against the Real Property. To the best of the Trustee's
14 knowledge, property tax payments in regard to the Real Property were current up
15 through the end of tax year 2008-09, with the first installment for tax year 2010-11
16 due no later than December 10, 2010. See Tesar Declaration.

17 II. RELIEF REQUESTED BY THE TRUSTEE

18 The Trustee has determined that the estate's equity in the Real Property, if any,
19 will not benefit the estate because transaction costs and a low tax basis would create
20 administrative expenses that would likely consume any such equity. In addition, after
21 supervising the harvest of the almond crops for the 2010 crop year, the Trustee has
22 determined that it is unlikely that future harvest and sale of almonds from the Real
23 Property will generate any significant profit. See Tesar Declaration. These factors
24 make the Real Property of inconsequential value and benefit to the estate.

25 The Trustee has also determined that the Equipment has no significant realizable
26 equity for benefit of the estate. Specifically, the Equipment likely has a value so low
27 that the Trustee would be unable to recover any significant amount of equity for the

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benefit of the estate after administrative costs and costs of sale are taken into account.

See id.

Based on the circumstances above, the Trustee seeks to abandon the Real Property and the Equipment, but not the harvested crops from the Real Property or any almond butter from the Real Property, the disposition of which he is monitoring. The Trustee requests that abandonment of the Real Property and Equipment be made effective December 9, 2010, the day before the next installment of real property taxes comes due.

III. CONCLUSION

For the reasons set forth above, the Trustee requests that the court enter an order providing that the Real Property and the Equipment be abandoned, that abandonment be made effective as of December 9, 2010, and providing for such other relief as the court deems proper.

Respectfully submitted,

Dated: 11. 30. 2010

MEEGAN, HANSCHU & KASSEN BROCK

By: 

Anthony Asebedo
Attorneys for the Trustee